B. Comments

41. The commenters disagree on whether we should forbear from applying the Section 226 tariff filing requirement.[112] Some support a complete detariffing policy and assert that informational tariffs are not necessary to protect consumers against unfair or deceptive practices. Others urge us to make the finding specified in that section for waiving such requirement. AT&T maintains that the Commission should apply the same tariff forbearance rules to its operator services as it applies to its other interstate services. Another commenter supporting forbearance with regard to the requirement to file informational tariffs asserts that OSPs have misinformed consumers about the purpose of informational tariffs.

42. Other commenters are opposed to complete detariffing, believing that informational tariffs ensure that OSP charges and practices are just and reasonable and are an important consumer safeguard. Some commenters contend that it is premature to remove the tariff filing requirement and that informational tariffs are needed as a tripwire to enable the Commission to determine whether further investigation is necessary.

C. Discussion

43. We are not prepared to conclude at this time that Section 226 informational tariffs no longer are necessary to protect consumers and that we should either waive or forbear from requiring such tariffs. We continue to receive thousands of consumer complaints each year about OSP rates and related aggregator surcharges or PIFs. We amend our rules to increase the usefulness of informational tariffs by requiring that such tariffs include specific rates expressed in dollars and cents as well as applicable per-call aggregator surcharges or other per-call fees, if any, that are collected from consumers.[113] The continued filing of these tariffs will allow the Commission to monitor OSPs' rates and any related surcharges after the rules adopted herein become effective. We will revisit whether informational tariffs by nondominant carriers still are needed if our rules achieve the anticipated results. We conclude that requiring OSPs to disclose how to obtain the price of a call to prospective customers at the point of purchase, in addition to the availability of pricing and other material information from the public tariffs of rivals, will allow consumers to exercise rational purchasing decisions, encourage OSPs to initiate price reductions and other competitive programs, and impose market-based discipline on OSPs. Under TOCSIA, the rates and related surcharges or fees in OSPs' informational tariffs may be changed without prior notice to consumers or to this Commission. As noted above, we have authority to waive the statutory requirement for such tariffs if we determine that our rules adequately protect consumers from unfair and deceptive practices and ensure their opportunity to make informed

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112 See Appendix C at paras. 56-64.

113 See Appendix A.

choices in making 0+ calls from payphones or other aggregator sites such that tariffs are unnecessary.[114]

VII. PETITIONS FOR RECONSIDERATION OF THE 1992 PHASE I ORDER (0+ PUBLIC DOMAIN PROPOSAL)

A. Background

44. In 1992, the Commission considered the need to address competitive problems resulting from the use of AT&T proprietary calling cards with the 0+ form of access.[115] Although the Commission planned to examine a wide range of issues related to the OSP market segment, we decided to take immediate action in response to parties' concerns and proposals.[116] MCI first proposed restriction of proprietary IXC cards with 0+ access in April 1991.[117] MCI then proposed that the Commission should mandate 0+ dialing as being in the "public domain," so that all carriers issuing calling cards with instructions to use 0+ as the access method would be required to permit access by other OSPs to billing and validation information for these cards, so that other OSPs would be able to handle and bill for 0+ calls by such card holders.[118] Under that proposal, carriers that wished to issue proprietary cards, in other words, not make billing and validation information available to other OSPs, would be required to establish an 800 or 950 access method instead of using 0+.[119] In addition, MCI advocated that the Commission require that any OSP completing a calling card call using 0+ access, where feasible, not charge more than the applicable rates of the carrier issuing the card, so that consumers would not be assessed unexpectedly high rates.[120] This concept was ultimately termed the "0+ Public Domain" proposal.[121]

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114 See supra para. 34.

115 Phase I Order, 7 FCC Rcd 7714. Proprietary calling cards are calling cards that are valid only for calls handled by the carrier that issued the card.

116 Id.

117 See id. at 7714 n.1.

118 See id.

119 See id.

120 See id.

121 See id.

45. The Commission received expressions of concern that the 0+ public domain proposal could undermine AT&T's card issuer identification (CIID) cards,[122] which in 1992 were used by more than 20 million people.[123] Conversely, some of AT&T's competitors claimed that their inability to accept calls made with these cards seriously handicapped them in the operator services marketplace.[124] In taking certain steps to protect consumers and mitigate competitive problems that resulted from the use of proprietary IXC calling cards with 0+ access, the Commission released its Phase I Order.[125]

46. In its Phase I Order, the Commission considered the competitive problems resulting from the use of AT&T proprietary calling cards with the 0+ form of access in the presubscription environment, wherein an OSP other than AT&T could be the presubscribed OSP for aggregator phones.[126] The Commission considered arguments which urged that adoption of a system of 0+ access for calling cards with open validation databases was essential to preserving a competitive market segment for operator services.[127] The Commission also considered arguments that the 0+ public domain proposal would create confusion and inconvenience for IXC customers.[128] Consistent with its paramount concern for consumer welfare, and in order to mitigate the competitive problems that result from the use of proprietary IXC calling cards with 0+ access, the Commission required AT&T to change its practices by revising its access instructions to card holders.[129] Specifically, the Commission directed AT&T to (1) educate its cardholders to check payphone notices and to use 0+ access only at public phones identified as presubscribed to AT&T; (2) provide clear and accurate access code dialing instructions on every proprietary card issued; and (3) make its 800 access code number easier to use.[130] The Commission found that

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122 The CIID card is proprietary because AT&T does not permit other OSPs to access and use the data necessary to validate calls billed to this card. The lack of OSP access to AT&T's CIID card database was alleged to contribute to consumer confusion and frustration when 0+ calls could not be completed due to the OSP's inability to validate the card information.

123 See, e.g., Letter from Honorable Bud Cramer, Member of Congress, to Alfred C. Sikes, Chairman, Federal Communications Commission (June 12, 1992) (requesting that 0+ public domain be carefully evaluated for its effect on consumers and rejected if not beneficial to consuming public).

124 See Letter from Alfred C. Sikes, Chairman, Federal Communications Commission, to Honorable Bud Cramer, Member of Congress (June 29, 1992).

125 Phase 1 Order, 7 FCC Rcd at 7726, 7714.

126 Id. at 7719.

127 Id. at 7721.

128 Id. at 7722.

129 Id. at 7714, .

130 Id. at 7724-25.

consumer education was the interim remedy best suited to the immediate consumer and competitive concerns caused by AT&T's dialing instructions, and declined to adopt the 0+ public domain proposal or other alternative interim remedies proffered by AT&T's competitors.[131] Eight parties (petitioners) filed petitions for reconsideration of that decision.[132]

47. Petitioners advance various arguments in support of their requests: the Commission failed to take appropriate action to eliminate anti-competitive problems posed by the CIID program;[133] the Commission's promise to consider BPP as a solution was inappropriate in light of "immediate competitive problem(s);"[134] the Commission failed to recognize that the CIID card is not a common proprietary IXC card;[135] the Commission acquiesced to AT&T's "threat" that it would require access codes for its cardholders, thereby perpetuating a "monopolistic" environment;[136] the CIID card is not truly proprietary; and the Commission's actions are inconsistent with its requirement of nondiscriminatory access to LEC validation data.[137] Thus, petitioners argue, the Commission should adopt the 0+ public domain proposal and require AT&T to open its billing and validation database. In this section, we address these issues and conclude that the petitions for reconsideration should be denied.

B. Discussion

48. As an initial matter, we conclude that petitioners restate arguments that they previously raised and which the Commission fully considered in reaching its Phase I Order.[138] Because petitioners have offered no new facts or legal arguments in support of their petitions, as discussed below, we find no basis to reconsider the Commission's decision not to adopt the 0+ Public Domain proposal in the Phase I Order. We also note that AT&T has been dropping its calling card billing agreements with LECs, reportedly as part of its strategy to handle all calls on its own network rather than sharing billing information with LECs.[139] AT&T's cancellation of

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131 Id.

132 See Appendix B at 5; Appendix C at 32.

133 See, e.g., CompTel petition at 8.

134 Id. at 9, 11-12.

135 Id. at 15; LDDS Petition at 5; PhoneTel Reply to Opp. to Petition at 4.

136 LDDS Petition at 5-6; ITI Petition at 4; Polar Petition at 3; see also MCI Petition at 4-5.

137 LDDS Petition at 10-13.

138 See AT&T Opp. Petition at 3; AT&T Reply in Opp. to Petition at 2.

139 See Communications Daily, May 28, 1997, at 9 ("AT&T Ending Practice of Allowing its Customers to Use AT&T Calling Card when Dialing Long Distance, Forcing Its Customers to Use 800-CALL-ATT Bypass Service").

its billing agreements with LECs has rendered, or in the foreseeable future should render, petitioners' concerns in this regard largely moot. Thus, we deny the petitions for reconsideration of the Phase I Order.

49. LDDS argues that because AT&T permits shared access to its CIID card database by "virtually any company that jointly provided long distance service with AT&T prior to divestiture," the Commission was incorrect in considering the database to be proprietary.[140] LDDS maintains that AT&T should be required to permit access to its database by all other carriers, not just LECs. This argument, however, ignores the fact that AT&T nonetheless exercises control over access to its database. Nothing in the record suggests that any entity other than AT&T has control over its CIID card validation database. The fact that AT&T chooses to share access to its database with certain other carriers (e.g., LECs) does not mean that it has relinquished dominion over the database or that the card is not proprietary to AT&T's system. The Commission did consider the option of requiring AT&T to open its card validation database to all carriers.[141] The Commission noted, however, that AT&T clearly stated that it would not open its database for its competitors' use and would implement a system of strict access code calling.[142] The Commission found that to force this result would not serve the public interest.[143]

50. In its Phase I Order, the Commission attempted to address the issues of consumer costs and a competitive OSP calling environment through the remedy of a mandated consumer education program.[144] CompTel asserts that "the record shows that the instance of misdirected attempts by MCI or Sprint proprietary card holders is negligible because these carriers educate their customers to use the card in conjunction with an access code."[145] The Commission adopted the consumer education requirement, finding that any costs to AT&T of carrying out this remedy were far outweighed by the gains in consumer convenience and competition.[146] The Commission further noted that "[i]f AT&T educates all of its customers to check public phone signage before dialing, and to dial 0+ only where AT&T is identified as the presubscribed carrier, its competitors should receive significantly fewer misdirected calls."[147] Some petitioners argue that the Commission should order an alternative remedy such as the recall and reissuance of 25 million

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140 LDDS Petition at 7.

141 Phase I Order, 7 FCC Rcd at 7721, 7723.

142 Id. at 7723-24.

143 Id. at 7723.

144 Id. at 7724.

145 CompTel Petition at 15, n.36.

146 Phase I Order, 7 FCC Rcd at 7725.

147 Id.

AT&T CIID cards.[148] We believe, however, that such a remedy would be even less effective because it would create even greater customer confusion and market disturbances than existed prior to the Commission's consumer education order. The Commission's mandated customer education program attempts to reduce the instances of unbillable CIID calls while not unreasonably disturbing the dialing habits of AT&T cardholders. This remedy is less burdensome and more consistent with the public interest than the proposed recall and reissuance of all AT&T CIID cards. The Commission's choice of a narrowly tailored remedy has proven effective, in light of a four-year period in which consumers have used the CIID card in accord with AT&T's new instructions[149] and hundreds of OSPs continue to operate in this market segment.[150]

51. In October 1995, the Commission took note of the competitive concerns, including AT&T's use of its proprietary CIID card, that petitioners had raised more than three years earlier when they sought reconsideration of the Commission's Phase I Order. In AT&T Reclassification Order, the Commission found that AT&T's competitive position in the provision of calling card and other operator services had not created market power in the overall interstate, domestic, interexchange telecommunications market.[151] The Commission noted that because of requirements adopted in the Phase I Order in the instant proceeding, AT&T no longer marketed its proprietary card using a 0+ message to gain a competitive advantage with public phone presubscriptions.[152] The Commission further noted that, by 1992, MCI and Sprint, together, had issued over 32 million proprietary cards.[153] The Commission stated that it, "has closely monitored operator services in recent years, and [that] the primary problems that we have observed in this market segment have not involved AT&T"[154] and that ". . . to the extent that there are problems in this market segment, they do not appear attributable to AT&T."[155]

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148 PhoneTel Petition at 8-9; see LDDS Petition at 15-16.

149 In 1993, the Common Carrier Bureau reviewed and approved AT&T's plan for consumer education. See Letter from Cheryl A. Tritt, Chief, Common Carrier Bureau, to Robert H. Castellano, Director, Federal Regulation, AT&T, dated February 4, 1993.

150 As of August 19, 1997, approximately 630 OSPs had informational tariffs on file with the Commission.

151 Motion of AT&T to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271, 3323 (1995), petitions for reconsideration denied, 62 FR 56,111 (October 8, 1997) (AT&T Reclassification Order).

152 Id. at 3323-24.

153 Id. at 3324.

154 Id. (footnote omitted).

155 Id. at 3325.

VIII. INTRASTATE OPERATOR SERVICES

A. Background

52. We note that with respect to operator service providers that compete with LECs to provide operator services from aggregator locations, state regulation has varied from prohibiting competitive operator services altogether (no longer permissible under Section 253 of the Communications Act)[156] to allowing such services on an unregulated basis.[157] More than thirty states regulate long-distance charges for intrastate calls made through OSPs.[158] Illinois, for example, permits a surcharge of no more than $2.50 and requires that per-minute rates be no higher than those of the dominant provider.[159]

B. Comments

53. Although we did not invite comment on this issue, NARUC and the NYCPB request that we make clear that states are not precluded from adopting greater safeguards or more stringent rules regarding OSP services and aggregator practices with regard to intrastate operator services than those that we have adopted herein for interstate services.[160] The Ohio Commission, which supports adoption of oral disclosure rules as suggested by the Colorado Commission staff, urges that, regardless of our decision regarding additional oral branding requirements, "any

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156 Section 253(a) provides that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." (emphasis supplied), 47 U.S.C. § 253(a). See Classic Telephone, Inc., 11 FCC Rcd 13082 (1996) (cities' decisions denying franchise applications preempted), appealed sub nom. City of Bogue, Kansas v. FCC, No. 96-1432 (D.C. Cir.) emergency petition denied and appeal ordered held in abeyance pending further order of the court, 1997 WL 68331 (D.C. Cir.) Jan. 14, 1997; New England Public Communications Council, 11 FCC Rcd 19713 (1996) (overturning Conn. Dept. of Public Utility Control's decision that had prohibited independent pay phone providers and other non-LECs from offering pay phone service in Connecticut), reconsideration denied, 12 FCC Rcd 5215 (1997).

157 See NARUC Compilation of Utility Regulatory Policy 1995-1996, Table 164, at 362; C.U.R.E. Reply Comments at Attachment 1(Summary of State Survey Regarding Rate Restrictions on InterLata, Intrastate Inmate Telephone Rates).

158 NARUC Compilation of Utility Regulatory Policy 1995-1996, Table 164, at 362I. See also Penny Loeb, Watch that Pay Phone or Risk Getting Charged Far Above the Usual Rate for Long-distance Calls, U.S. News & World Rep., June 26, 1995, at 60, available in 1995 WL 3114002.

159 Penny Loeb, Watch that Pay Phone or Risk Getting Charged Far Above the Usual Rate for Long-distance Calls, U.S. News & World Rep., June 26, 1995, at 60, available in 1995 WL 3114002.

160 Letter from James Bradford Ramsay, Deputy Assistant General Counsel, NARUC, to William F. Caton, Acting Secretary, Federal Communications Commission (July 16, 1996) at 1; NYCPB Comments at 7.

posting requirements, either mandated by the FCC or by the individual states, be maintained."[161] Other state regulatory agencies similarly oppose adoption of any rules that would preclude states from adopting more safeguards or more stringent rules regarding OSPs and providers of operator services to correctional institutions.[162] Such state agencies assert that OSPs and providers of operator services to correctional institutions should be prohibited from charging rates in excess of absolute rate caps on all operator service calls and, if they are not, that any oral information required to be given by OSPs be provided audibly and distinctly, in both English, and in the predominant second language, if any, of the residents of the wire center served by the aggregator's telephone.[163] In addition, the oral information should also provide the consumer with directions how to reach and use a carrier whose rates are less than FCC established benchmarks.[164] The agencies suggest adoption of a rule that would not require customers to pay any charges that exceeded any FCC established price cap or benchmark if the required notice had not been given.[165] The Florida Commission is concerned that the use of forbearance authority to eliminate interstate tariff requirements might have repercussions at the state level.[166]

C. Discussion

54. While we continue to receive many complaints about high rates for 0+ calls involving both interstate and intrastate services from payphones, the policies and rules adopted herein are applicable only to interstate services.[167] As requested by NARUC and the NYCPB, we clarify that the states are not precluded from adopting greater safeguards or more stringent rules regarding OSP services and aggregator practices with regard to intrastate operator services than those that we have adopted herein for interstate services. Any such state statute, regulation, or legal requirement, however, may not violate Section 253 (a) of the Communications Act,[168]

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161 Ohio Commission Comments at 4.

162 See, e.g., jointly filed Reply Comments of the State of Maine Public Utilities Commission, State of Montana Public Service Commission, New Mexico State Corporation Commission, and State of Vermont Department of Public Service.

163 Id. at 2.

164 Id.

165 Id.

166 Florida Commission Comments at 7.

167 Section 226 is concerned with interstate, domestic, interexchange operator services. See 47 U.S.C. § 226(a)(7) ("The term 'operator services' means any interstate telecommunications service initiated from an aggregator location . . . ") (emphasis added). Providers of operator services from the United States to foreign points are subject to the tariff filing requirements of Section 203, and our rules and policies applicable to international telecommunications services.

168 See supra n. 156.

must not be preempted under Section 276(c) of the Communications Act,[169] and must not contravene any other provision of the Communications Act, or any Commission regulation or order. We stress that we are adopting minimum requirements that are not intended to preempt state requirements or safeguards. We note, for example, that the New York State Department of Public Service (NYDPS), which urged this Commission to set benchmarks for OSPs' interstate rates, has rules that:

> allow the tariffs of operator services providers [which are required to be filed by the New York State Public Service Commission] to take effect unless the maximum rates charged by such providers exceed the highest rates authorized by the commission for a local exchange telephone corporation or a dominant interexchange telephone corporation in the state for similar kinds of operator assisted telephone calls.[170]

55. The policies and rules we adopt herein do not preclude, for example, state actions that prohibit aggregator surcharges or other PIFs for intrastate calls, or that cap OSP rates and related PIFs, such as the rate cap in Florida tied to AT&T's rates that the Florida Commission adopted[171] and the Pennsylvania Commission's proposed $1.00 cap on location surcharges on intrastate OSP calls in Pennsylvania.[172] As requested by Citizens United for Rehabilitation of Errants (C.U.R.E.) with regard to intrastate rates for collect calls from prisons,[173] we also make clear that our action herein similarly does not preempt state rate caps that may be lower than any rate benchmark proposals for interstate operator services considered, but not adopted in this proceeding. We note, however, that some commenters believe that interstate telecommunications services ratepayers should subsidize providers of operator services whose intrastate operator service rates and surcharges have been capped by a state at a level that is alleged to be "unfair" or which precludes recovery of the carrier's alleged "reasonable" costs and profit.[174] Any such subsidy or cross-subsidization would inhibit competition at the intrastate level, contrary to our policies encouraging competition in all telecommunications markets. We are unaware of any

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169 Any state requirements inconsistent with the Commission's regulations concerning the provision of payphone service in implementation of Section 276 of the Communications Act are preempted under subsection (c) thereof, 47 U.S.C. § 276(c).

170 NYDPS Comments at 2 n.1.

171 See Florida Commission Comments at 6.

172 See Pennsylvania Commission Initial Comments, late filed July 25, 1996, at 3.

173 C.U.R.E. Reply Comments at 6.

174 See, e.g., InVision Comments at 8; Coalition Reply Comments at 8.

public policy reason why users of interstate operator services should be required to subsidize users of intrastate operator services.[175]

IX. 0+ CALLS BY PRISON INMATES

A. Background

56. In our OSP Reform Notice, we considered calls from inmate-only telephones in prisons, jails and other correctional or similar institutions (hereinafter prisons) separately from 0+ calls from aggregator locations for two primary reasons.

> First, neither TOCSIA nor our rules require telephones for use only by prison inmates to be unblocked. Thus, callers from these facilities are generally unable to select the carrier of their choice; ordinarily they are limited to the carrier selected by the prison. A disclosure requirement can not directly aid such callers. Second, prisons often install and maintain security equipment for a number of legitimate reasons involving security and other government prerogatives. Given that prisons would likely seek to recover the cost of any equipment employed for legitimate security reasons, we would expect that competitive prices for inmate-only telephone calls from prisons could be higher than the rates of calls from ordinary locations. The record in this proceeding indicates, however, that at least one prison carrier, Gateway, has stated that it is willing and able to provide calls from prisons as well as the standard security equipment at rates comparable to those charged by AT&T, MCI and other large carriers.[176]

We invited comment on whether the public interest would be better served by some remedy other than BPP for prison inmate calling, including requiring oral full price disclosure to the called party before connecting the inmate call.

B. Discussion

57. We are persuaded by comments of the United States Attorney General, other federal officials, and nearly all who have commented on this issue that implementation of BPP for outgoing calls by prison inmates should not be adopted. With regard to such calls, it has generally been the practice of prison authorities at both the federal and state levels, including state political subdivisions, to grant an outbound calling monopoly to a single IXC serving the particular prison. This approach appears to recognize the special security requirements applicable

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[175] See also Comments of APCC in CC Docket No. 96-128, July 1, 1996, at 9 (FCC prescription of a fair, uniform payphone fee applicable to every call will end "the forced dependence on interstate 0+ subsidies that destabilizes the entire payphone industry.").

[176] OSP Reform Notice, 11 FCC Rcd at 7301 (footnotes omitted).

to inmate calls. Moreover, requiring BPP for inmate calls in the absence of BPP for 0+ calls might place the cost of implementation on the recipient of such calls, thus exacerbating the problem of high-cost calls. Finally, as the Florida Commission noted, prisons may allow inmates to place calls to pre-approved 800 numbers of their families and legal counsel, or, as the Florida Commission has done, allow them to use pre-paid debit cards.[177] Such options would exert downward pressure on high interstate rates for 0+ calls from inmate phones, diminish the ability of a prison and its PIC to set supracompetitive rates, and thus lessen or obviate the need for further federal regulations concerning 0+ rates in this submarket.

58. The Commission has concluded that the definition of aggregator "does not apply to correctional institutions in situations in which they provide inmate-only phones."[178] It does not necessarily follow, however, that we should not adopt consumer protection rules similar to those applicable to providers of 0+ service at aggregator locations. The Commission continues to receive complaints about inmate service providers' practices that result in excessive charges being collected from consumers for interstate collect calls.[179]

59. For the reasons set forth in Section IV above, however, we decline to establish price benchmarks or rate caps. Although, prison authorities have considerable power to ensure that rates are just and reasonable by virtue of the monopoly contracts they confer, they also have the power and the incentive to contract with OSPs that will give them the largest revenues from inmate phones. If we set caps or benchmarks, carriers would have little incentive to contract to offer services at a lower rate. Rather, because rates must be filed with the Commission and must conform to the just and reasonable requirements of Section 201 of the Act, we believe that it is more efficient and less intrusive to proceed on a case-by-case basis, should the rules we adopt herein not lead to reasonable rates for calls from inmate phones.

60. Although we do not require BPP or benchmarks, we do agree with commenters that consumers, in this case the recipients of collect calls from inmates, require additional safeguards to avoid being charged excessive rates from a monopoly provider. We conclude, therefore, that we should require all providers of operator services from inmate-only telephones to identify orally themselves to the party to be billed for any interstate call and orally disclose to such party how, without having to dial a separate number, it may obtain the charge for the first minute of the call and the charge for additional minutes, prior to billing for any interstate call from such a telephone. Just as OSPs may give the party to be billed for an interstate call the option to by-pass receiving such rate information, providers of operator services for interstate

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177 Florida Commission Comments at 11.

178 See OSP Reform Notice, 11 FCC Rcd at 7300 n.122, quoting TOCSIA Order.

179 See, e.g., informal complaint File No. 97-24317 (complaint alleging MCI Telecommunications Corporation overcharged for interstate collect calls from prison inmate phone); File No. 97-20961 (complaint alleging AT&T's practices and charges for interstate collect calls from inmate phones are unreasonable); File No. 97-24319 (complaint about InVision Telecom's monopoly, practices, and high 0+ intrastate and interstate toll rates).

calls initiated by a prison inmate similarly may give the party to be billed the option to by-pass receiving rate information. Even if, arguendo, restrictions on all dial-around calls can still be justified for inmate-only telephones, rules requiring providers to identify orally themselves to both parties to a collect call and to disclose to the party to be billed how to obtain specific rate information without charge, can eliminate some of the abusive practices that have led to complaints. Specifically, the billed party can decide whether to accept the call and can limit the length of the call.

61. Finally, just as it would be contrary to our policies encouraging competition in all telecommunication markets to have intrastate operator services from aggregator locations subsidized by interstate service ratepayers,[180] it would similarly be an undue burden on interstate commerce to have costs of providing intrastate service to prison inmates cross-subsidized by interstate service ratepayers. We note that most calls by prison inmates appear to be intrastate rather than interstate.[181]

X. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

62. As required by the Regulatory Flexibility Act (RFA),[182] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the OSP Reform Notice.[183] The Commission sought written public comments on the proposals in the OSP Reform Notice, including on the IRFA.[184] The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996).[185] The Commission is issuing this Order to protect consumers from excessive charges in connection with interstate 0+ operator services for payphone and prison inmate calls by ensuring that they are aware of their right to ascertain the specific cost for such calls so that they may hang up before incurring any charge that they believe is excessive.

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180 See supra para. 55.

181 See C.U.R.E. Reply Comments at 5 ("the vast majority of inmate calling traffic is intrastate").

182 See 5 U.S.C. § 603.

183 OSP Reform Notice, 11 FCC Rcd at 7302.

184 Id. at 7303.

185 Title II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. § 601 et seq.

1. Need for and Objectives of this Report and Order and the Rules Adopted Herein

63. In the 1996 Act, Congress sought to establish "a pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry.[186] One of the principal goals of the telephony provisions of the 1996 Act is promoting increased competition in all telecommunications markets, including those that are already open to competition, particularly long-distance services markets.

64. In this Second Report and Order, we adopt rules requiring carriers to orally disclose to consumers how to obtain the cost of operator services for interstate calls from aggregator locations and from prison inmate-only telephones.[187] The objective of the rules adopted in this Order is to implement as quickly and effectively as possible the national telecommunications policies embodied in the 1996 Act and to promote the development of competitive, deregulated markets envisioned by Congress. In doing so, we are mindful of the balance that Congress struck between this goal of bringing the benefits of competition to all consumers and its concern for the impact of the 1996 Act on small business entities.[188]

2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

65. In the OSP Reform Notice, the Commission performed an IRFA.[189] In the IRFA, the Commission found that the rules it proposed to adopt in this proceeding may have an impact on small business entities as defined by section 601(3) of the RFA.[190] In addition, the IRFA solicited comment on alternatives to the proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding.[191]

3. Comments on the IRFA

66. Only one comment specifically addressed the Commission's IRFA. ACTA, a national trade association representing interexchange carriers, strongly supports adoption of a

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186 Joint Explanatory Statement at 113.

187 See Appendix A.

188 In this Order, we also consider, but decline to adopt, proposals to establish, price caps, benchmarks, or other price regulation of OSP charges and aggregator surcharges, 0+ in the public domain, and a billed party preference system.

189 OSP Reform Notice, 11 FCC Rcd at 7302.

190 Id.

191 Id. at 7303.

price disclosure requirement for all 0+ calls to provide consumers with the information necessary to make informed choices, thus doing away with the need for alternative proposals setting benchmark rates to trigger oral disclosure requirements.[192] ACTA asserts that adoption of the alternative benchmark proposal would lead to anti-competitive and discriminatory results and therefore does not comply with the RFA.[193]

67. In support thereof, ACTA asserts: that basing benchmarks on the rates of the three largest IXCs (the Big Three) is unsound because it ignores greater underlying costs borne by smaller carriers and economic disparities which exist between the Big Three carriers and all other OSPs; that the Big Three may recover their costs through cross-subsidization and arbitrary cost allocations that are possible because of their multi-market operations, whereas small providers can only recover their costs directly through rates charged consumers; that because all or most small carriers will be required to make oral disclosures, the public will be conditioned to associate small providers with excessive rates; that OSPs will be forced to charge rates below the Big Three and below their own costs, plus a reasonable profit, to get consumers to use their services; that the benchmark proposal thus has a confiscatory effect; and, accordingly, the already competitively disadvantaged smaller OSPs will not be able to sustain themselves in the marketplace, contrary to broad general policies seeking greater participation by smaller companies in competing in the OSP market, and the more specific policy that the Commission must apply in its RFA analysis.[194]

68. Further, ACTA contends that proposed benchmark rate elements such as time of day and distance do not affect underlying costs, are contrary to the industry's growing reliance on nationwide flat rates, and are inappropriate and unduly burdensome on small businesses. Moreover, ACTA contends that the list of characteristics proposed by the Commission does not take into account actual costs necessary to compete in the OSP marketplace such as PIFs and commissions, further skewing the competitive environment adversely to small businesses. According to ACTA, a benchmark margin of two to three times that of the Big Three benchmark carriers is needed to cover differences in underlying costs, not the 15 percent margin on which the Commission sought comment. ACTA also contends that the proposed benchmark methodology provides the benchmark carriers with the opportunity to engage in anti-competitive conduct and predatory pricing.[195]

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[192] Initial Regulatory Flexibility Act Analysis, Comments of America's Carriers Telecommunication Association, filed July 17, 1996, at 1.

[193] Id.

[194] Id. at 2-3.

[195] Id. at 4-5.

69. Although not specifically filing an IRFA analysis, other commenters oppose adoption of rules that would unduly burden small businesses.[196] Cleartel/ConQuest assert, arguendo, that even if a rate benchmark could be justified on the basis of consumer expectations, any standard disclosure that only applies to the smaller OSPs, and not to the three largest, would be arbitrary and discriminatory, would place an uneven burden on smaller OSPs, and would stigmatize all carriers other than the big three for the traveling public.[197] NTCA asserts that industry-wide mandated BPP deployment is not economically feasible and would adversely affect small and rural LECs.[198]

4. Discussion

70. We agree with ACTA's views in regard to our IRFA and have concluded that the minimum rules adopted herein are necessary to protect consumers and will not unduly burden small OSPs or other small business entities. Such rules will aid consumers, including small business entities, avoid incurring excessive charges for 0+ operator services. The rules also provide OSPs and potential OSP competitors, including small business firms, a level playing field in that they apply equally to all OSPs, and, unlike benchmark proposals, do not discriminate against smaller OSP companies. Further, we are terminating our inquiry into BPP as urged by NTCA on behalf of small and rural LECs. Moreover, as urged by many commenters, including small business entities, we have not adopted various benchmark proposals or other price control rules set forth in this proceeding. Based on the record in this proceeding, we conclude that, contrary to the initial tentative conclusion in OSP Reform Notice, for the Commission to engage in price regulation of OSPs' rates, including benchmark regulation, would involve micro-managing the rates of nondominant carriers, including hundreds of small business companies. Such regulation would be the antithesis of the deregulatory thrust of the Regulatory Flexibility Act and the 1996 Act.

5. Description and Estimates of the Number of Small Entities to Which the Rules Will Apply

71. The rules adopted require that hundreds of nondominant interexchange carriers implement certain information disclosure procedures regarding their rates, and any related fees of the owners of the premises where the telephone instrument is located. Small entities may feel some economic impact in additional message production, recording costs, and equipment retrofitting or replacement costs due to the policies and rules adopted. Small providers of operator services also may experience greater live operator costs initially until automated terminal equipment and network systems are modified to replace the need for intervention of live operators.

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196 See, e.g., NTCA Comments at 2-3.

197 Cleartel/ConQuest Comments at 7-10.

198 NTCA Reply Comments at 2.

72. For the purposes of this analysis, we examine the relevant definition of "small entity" or "small business" and apply this definition to identify those entities that may be affected by the rules adopted in this Second Report and Order. The RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[199] A "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (the SBA).[200] The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees.[201] We first discuss generally the total number of telephone companies falling within this SIC category. Then, we refine further those estimates and discuss the number of carriers falling within relevant subcategories.

73. Total Number of Telephone Companies Affected. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[202] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, operator service providers, pay telephone operators, personal communications service (PCS) providers, covered specialized mobile radio (SMR) providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities, small interexchange carriers, or resellers of interexchange services, because they are not "independently owned and operated."[203] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by this Order.

74. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telecommunications companies other than radiotelephone (wireless) companies

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199 See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

200 Small Business Act, 15 U.S.C. § 632 (1996).

201 13 C.F.R. § 121.201.

202 United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

203 15 U.S.C. § 632(a)(1).

(Telephone Communications, Except Radiotelephone). The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[204] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.[205] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau, 2,295 companies were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities based on these employment statistics. Because it seems certain, however, that some of these carriers are not independently owned and operated, this figure necessarily overstates the actual number of non-radiotelephone companies that would qualify as "small business concerns" under the SBA's definition. Consequently, we estimate using this methodology that there are fewer than 2,295 small entity telephone communications companies (other than radiotelephone companies) that may be affected by the decisions and rules adopted in this Order.

75. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of interexchange carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the TRS Worksheet. According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services.[206] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of interexchange carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 130 small entity interexchange carriers that may be affected by the decisions and rules adopted in this Order.

76. Resellers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone services.[207] Although it

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204 1992 Census at Firm Size 1-123.

205 13 C.F.R. § 121.201, SIC Code 4812.

206 Federal Communications Commission, CCB, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Tbl. 1 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Dec. 1996) (TRS Worksheet).

207 Id.

seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers that may be affected by the decisions and rules adopted in this Order.

77. Operator Service Providers. Carriers engaged in providing interstate operator services from aggregator locations (OSPs) currently are required under Section 226 of the Communications Act to file and maintain informational tariffs at the Commission. The number of such tariffs on file thus appears to be the most reliable source of information of which we are aware regarding the number of OSPs nationwide, including small business concerns, that will be affected by decisions and rules adopted in this Order. As of August 19, 1997, approximately 630 carriers had informational tariffs on file at the Commission. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of OSPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 630 small entity OSPs that may be affected by the decisions and rules adopted in this Order.

78. Local Exchange Carriers. Consistent with our prior practice, we shall continue to exclude small incumbent providers of local exchange services (LECs) from the definition of "small entity" and "small business concerns" for the purpose of this FRFA. Because any small incumbent LECs that may be subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of "small entity" and "small business concerns."[208] Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by the SBA as "small business concerns."[209]

79. Neither the Commission nor the SBA has developed a definition of small LECs. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813) (Telephone Communications, Except Radiotelephone) as previously detailed above. Our alternative method for estimation utilizes the data that we collect annually in connection with the TRS Worksheet. This data provides us with the most reliable source of information of which we are aware regarding the number of LECs nationwide. According to our most recent data, 1,347 companies reported that they were engaged

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[208] See Local Competition First Report and Order, 11 FCC Rcd 16144-5 at paras. 1328-30, 16150 at para. 1342 (1996). Because LECs generally are subject to regulation as dominant carriers, many LECs have formed separate IXC subsidiaries for their interstate, domestic, interexchange service offerings, presumably to facilitate competition with nondominant IXCs subject to less regulatory constraints.

[209] See id.

in the provision of local exchange services.[210] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small LECs (including small incumbent LECs) that may be affected by the rules adopted in this Order.

80. In addition, the rules adopted in this Order may affect companies that analyze information contained in OSPs' tariffs. The SBA has not developed a definition of small entities specifically applicable to companies that analyze tariff information. The closest applicable definition under SBA rules is for Information Retrieval Services (SIC Category 7375). The Census Bureau reports that, at the end of 1992, there were approximately 618 such firms classified as small entities.[211] This number contains a variety of different types of companies, only some of which analyze tariff information. We are unable at this time to estimate with greater precision the number of such companies and those that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 618 such small entity companies that may be affected by the decisions and rules adopted in this Order.

6. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

81. The rules adopted require carriers to disclose audibly to consumers how to obtain the price of a call before it is connected. In this section of the FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities as a result of this Order.[212] As a part of this discussion, we mention some of the types of skills that will be needed to meet the new requirements.

82. Nondominant interexchange carriers, including small nondominant interexchange carriers, will be required to provide oral information to away-from-home callers, advising them how to obtain the cost of an interstate 0+ call, and similarly to disclose to the party to be billed for collect calls from telephones set aside for use by prison inmates how to obtain the cost of the call before they could be billed for such calls. This change in the manner of conducting their business may require the use of technical, operational, accounting, billing, and legal skills.

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210 Federal Communications Commission, CCB, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Tbl. 1 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Dec. 1996) (TRS Worksheet).

211 U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 2D, SIC Code 7375 (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

212 See 5 U.S.C. § 604(a)(4).

7. Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives

83. In this section, we describe the steps taken to minimize the economic impact of our decisions on small entities and small incumbent IXCs, including the significant alternatives considered and rejected.[213] To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

84. We believe that our action requiring carriers to orally disclose how to obtain the price of their interstate 0+ operator services up front at the point of purchase will facilitate the development of increased competition in the interstate, domestic, interexchange market, thereby benefitting all consumers, some of which are small business entities. Specifically, we find that the rules adopted herein with respect to interstate, domestic, interexchange 0+ services will enhance competition among OSPs, promote competitive market conditions, and achieve other objectives that are in the public interest, including establishing market conditions that more closely resemble an unregulated environment. The decision not to require detariffing of OSP informational tariffs will also allow businesses, including small business entities, that audit and analyze information contained in tariffs to continue.

85. We have rejected several alternatives to the additional oral disclosure requirements and rules adopted herein, including proposals (1) to establish a costly billed party preference system for 0+ calls from aggregator and prison locations; (2) to micro-manage nondominant carriers' prices for such calls, including proposals to cap rates, establish annual FCC benchmarks, and to require cost justification for rates that exceed such benchmarks; (3) requiring oral warnings to prospective consumers comparing a carrier's rates with lower rates of the largest carriers; and (4) mandating 0+ in the public domain. Rejection of these alternatives helps to ensure that small carriers will not be unnecessarily burdened. The rules adopted herein are applicable only to limited interexchange 0+ calls from payphones, or other aggregator locations, and from inmate phones in correctional institutions. They are not applicable to international calls, intrastate calls, and interstate 0+ calls made by callers from their regular home or business. The rules also are inapplicable to calls that are initiated by dialing an access code prefix, such as 10333 or 1-800-877-8000, whereby callers may circumvent placing the call through the long-distance carrier that is presubscribed for that line.

8. Report to Congress

86. The Commission shall send a copy of this Final Regulatory Flexibility Act Analysis, along with this Second Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

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213 See id. at § 604(a)(5).

B. Final Paperwork Reduction Act of 1995 Regulatory Analysis

87. This Second Report and Order contains a modified information collection. As required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13,[214] the OSP Reform Notice invited the general public and the Office of Management and Budget (OMB) to comment on proposed changes to the Commission's information collection requirements contained therein.[215] The changes to our information collection requirements on which we sought comment in the OSP Reform Notice included: (1) the elimination of tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange operator services from aggregator locations;[216] and (2) requiring such carriers to disclose the cost of a call to consumers if the call was made using that carrier.[217]

88. On September 8, 1996, OMB approved, with comments, the proposed changes to our information collection requirements contained in OSP Reform Notice, in accordance with the Paperwork Reduction Act.[218] OMB asked us to address whether the consumer would not be better served by requiring all OSPs to inform the caller of the cost of the call "regardless of any benchmark."[219] Because we have concluded that we should adopt a disclosure requirement applicable to all OSPs, and not a disclosure rule based on benchmark rates,[220] concerns that OMB expressed in this regard have been met or rendered moot.[221]

89. OMB also stated that we should calculate and include, as a cost burden, the cost of installing the systems that will inform the consumer of the cost of a call [222] Although we invited comment on the costs and benefits of requiring all OSPs to disclose their rates on all 0+ calls from aggregator locations, the cost information we received was generally quite

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214 44 U.S.C. §§ 3501 et seq.

215 OSP Reform Notice, 11 FCC Rcd at 7303.

216 Id. at 7297.

217 Id. at 7298.

218 Notice of Office of Management and Budget Action, OMB No. 3060-0717 (September 8, 1996).

219 Id. at 2.

220 See supra para. 30.

221 In asking how consumers would be informed of the benchmark charge, OMB stated that the Commission should not assume that members of the public would know such benchmark cost and that "[t]heir knowledge will, in general, be limited to the cost of services provided by their interlata carrier of choice." Notice of Office of Management and Budget Action, OMB No. 3060-0717, supra at 2.

222 Id.

conclusionary rather than specific in nature.[223] The specific cost data filed by some parties vary. Intellicall states that its ULTRATEL store-and-forward payphones have no internal memory left to accommodate additional functionalities, let alone voluminous rate structures [and] cannot be retrofitted . . . to increase their memory capacity."[224] With respect to its new generation ASTRATEL store-and-forward payphones, Intellicall estimates that "it would cost approximately $200,000 and would require between eight and fourteen months, barring unforeseen circumstances to, among other things, develop, test, and 'debug' the computer software necessary to install the rate structures into the payphone memory, and 'import' the rate structures into the payphone memory."[225] GTE states that "[m]echanized equipment could possibly be enhanced to quote rates prior to the call connection, but this would require significant capital outlays and would involve several years lead time to accomplish."[226] GTE further states that its "current mechanized equipment (costing approximately $22 million in 1993) would most likely require a complete replacement for such a modification."[227] MCI estimates that it would cost an additional $0.40 per call if all calls have to be sent to a live operator in the near term.[228] Sprint estimates that the labor cost of a rate disclosure would approximate $0.35 per call.[229] U S WEST estimates that to mechanize a system that "would allow for a data base dip for every 0+/- call" would add about $0.50 to each call.[230] Thus, specific cost data of record is sparse and cost estimates of those who have commented vary considerably.

90. The new rules adopted herein require OSPs to orally advise consumers of their current right to obtain rate quotes at the time of purchase on interstate, domestic, interexchange 0+ calls. The rules are inapplicable to 0- calls. Further, we are not requiring real time rate

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223 See, e.g., GTE Comments at 7 (Average work time per call to determine and quote cost prior to call completion would "likely double, increasing the operator surcharge per call accordingly"). "For both mechanized and operator-handled 0+calls, quoting the call cost to consumers would significantly increase call holding time and necessitate additional trunking facilities.") Id. Because call costs would have to be quoted to the billed party, "additional equipment would be required for processing mechanized calls and additional operators, operator positions and building space for operator-handled calls." Id. at 7-8. Developing an automated system that can quote a rate at the point the call is made "will significantly increase the OSP's cost." MCI Comments at 4. Price disclosure "on each call is extremely costly." Pacific Telesis Comments at 3.

224 Letter from Judith St. Ledger-Roty, counsel for Intellicall, Inc., to William A. Caton, Acting Secretary, Federal Communications Commission (March 21, 1997) at 3.

225 Id. at 4.

226 GTE Comments at 7.

227 Id.

228 MCI Comments at 3-4.

229 Sprint Comments at 4 n.3.

230 US WEST Comments at 10.

quotes on every 0+ call, only when callers request such price information at the time of purchase. Most if not all who have commented agree with our conclusion that the cost of installing the systems necessary to implement the rules adopted herein should prove to be much less than the foregoing estimates and much less than the estimated one billion dollar cost of implementing an alternative billed party preference routing system for OSP interstate calls.

91. In this Order, we adopt certain changes to our information collection requirements on which we sought comment in the OSP Reform Notice. Specifically, we have adopted rules governing the filing of informational tariffs by OSPs for their interstate, domestic, interexchange 0+ services.[231] Implementation of these requirements will be subject to approval by OMB as prescribed by the Paperwork Reduction Act.

XI. CONCLUSION

92. We conclude that we should amend our rules to require OSPs to provide additional oral information to away-from-home callers, disclosing the cost of a call, including any aggregator surcharge for a 0+ interstate call from that aggregator location, before such a call is connected, at the consumer's option whether to receive such cost information. We also amend our rules to require carriers providing interstate service to prison inmates to orally disclose their identity to the party to be billed for such calls and, if such party elects to receive rate quotes for the call, to orally disclose the charges for the call before connecting the call. Finally, we deny petitions for reconsideration of the Phase I Order in this proceeding and terminate this proceeding.

XII. ORDERING CLAUSES

93. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 10, 201-205, 215, 218, 226, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 160, 201-205, 215, 218, 226, 254, that the policies, rules, and requirements set forth herein ARE ADOPTED.

94. IT IS FURTHER ORDERED that 47 C.F.R. Part 64, Subpart G IS AMENDED as set forth in Appendix A, effective July 1, 1998, except that the effectiveness of Section 64.703(a)(4) and Section 64.710 is stayed with respect to embedded store-and-forward telephone equipment until fifteen months thereafter.

95. IT IS FURTHER ORDERED that the request by Intellicall, Inc., filed March 21, 1997, seeking exemption of its ULTRATEL payphones from the rules adopted herein IS DENIED.

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[231] See Appendix A.

96. IT IS FURTHER ORDERED that the petitions for reconsideration of the Commission's Phase I Order in this docket, filed by Competitive Telecommunications Association, International Telecharge Incorporated, LDDS Communications, Inc., MCI Telecommunications Corp., PhoneTel Technologies, Inc., Polar Communications Corporation, Southwestern Bell Telephone Company, and Value-Added Communications ARE DENIED.

97. IT IS FURTHER ORDERED that the Office of Public Affairs, Reference Operations Division, shall mail a copy of this Report and Order to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 603(a)(1981). The Secretary shall cause a summary of this Order to appear in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A

Rule Amendments

PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 64 continues to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, unless otherwise noted.

2. Part 64, Subpart G, Section 64.703 is amended by removing the word "and" at the end of subsection (a)(2) and the period at the end of subsection (a)(3)(iii), and by adding a semicolon and the word "and" at the end of subsection (a)(3)(iii), and by adding the following new subsection after subsection (a)(3):

(4) Disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate, domestic, interexchange 0+ call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further oral advice to the consumer on how to proceed to make the call. The oral disclosure required in this subsection shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of operator services, by dialing no more than two digits or by remaining on the line.

3. Part 64, Subpart G, is further amended by adding the following Section 64.709:

§ 64.709 Informational tariffs.

(a) Informational tariffs filed pursuant to 47 U.S.C. § 226(h)(1)(A) shall contain specific rates expressed in dollars and cents for each interstate operator service of the carrier and shall also contain applicable per call aggregator surcharges or other per call fees, if any, collected from consumers by the carrier or any other entity.

(b) Per call fees, if any, billed on behalf of aggregators or others, shall be specified in informational tariffs in dollars and cents.

(c) In order to remove all doubt as to their proper application, all informational tariffs must contain clear and explicit explanatory statements regarding the rates, i.e., the tariffed price per unit of service, and the regulations governing the offering of service in that tariff.